

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HOLLAND AMERICA, *et al.*,

Plaintiffs,

v.

WARTSILA NORTH AMERICA, INC., *et al.*,

Defendants.

CASE NO. C04-1368RSM

ORDER GRANTING MOTION TO  
DISMISS PARTY

**I. INTRODUCTION**

This matter comes before the Court on defendant Wartsila Corporation's Motion to Dismiss the Second Amended Complaint for Lack of Personal Jurisdiction. (Dkt. #148). Defendants argue that Wartsila Corporation has little or no connection to this forum. Specifically, defendants note that Wartsila Corporation did not sell or manufacture the engines at issue in this case, it did not manufacture any spare parts, it did not provide any maintenance or service to the M/S/Y Windsong, and it is a separate and independent company from the other Wartsila entities. Wartsila Corporation further notes that it has never had an office in Washington, it has never maintained a telephone listing or bank account in Washington, it has never owned property, maintained a mailing address or had any employees reside in Washington, and it has never been licensed to conduct business in Washington. Moreover, Wartsila

1 Corporation avows that it is not presently doing or soliciting business in Washington, nor has it  
2 done so in the past. Finally, defendants assert that Wartsila North America, which is  
3 headquartered in Houston, Texas, is not Wartsila Corporation's alter ego. Thus, defendant  
4 argues that there is no basis for either general personal jurisdiction or specific personal  
5 jurisdiction in this Court.

6 Plaintiffs answer that Wartsila Corporation did produce the part at issue in this case, that  
7 Wartsila Corporation's ownership and management of the "Wartsila brand name" provides  
8 sufficient contact with Washington State to serve as a basis for personal jurisdiction in this  
9 forum, and that Wartsila Corporation's contacts with Wartsila North America provide sufficient  
10 contact with Washington State to serve as a basis for personal jurisdiction in this forum.  
11 Plaintiffs argue that because Wartsila Corporation directs its products to Wartsila North  
12 America, who in turn distributes the products in the United States, Wartsila has purposefully  
13 availed itself of business opportunities in this forum. Plaintiffs further argue that because  
14 Wartsila North America stipulated to litigation in this forum, and because it sometimes acts like  
15 an agent for Wartsila Corporation, Wartsila Corporation should be deemed to have also  
16 stipulated to litigation in this forum. Finally, plaintiffs argue that it is not unreasonable to subject  
17 Wartsila Corporation to jurisdiction in the forum where it directs products to be promoted and  
18 sold.

19 Having considered defendant Wartsila Corporation's motion, plaintiffs' response,  
20 defendants' reply, and the remainder of the record, the Court hereby GRANTS defendants'  
21 motion.

## 22 **II. DISCUSSION**

### 23 **A. Background**

24 Plaintiffs filed the instant case on June 10, 2004. Plaintiff Holland America Line, Inc., is  
25 a Washington state corporation, and owner and agent of co-plaintiff Windstar Sail Cruises, Ltd.  
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1 Plaintiff Windstar Sail Cruises, Ltd., is a Bahamian corporation, which operates passenger sail  
2 cruises. Plaintiffs' claims arise from a fire that completely destroyed a sailing yacht formerly  
3 owned by Windstar, called the M/S/Y Wind Song. Plaintiffs allege that while en route from  
4 Papeete, Tahiti, to Huahine, Tahiti, a fire broke out in the engine room of the yacht, which  
5 spread throughout the yacht's electrical system, resulting in a total loss of the vessel.

6 Plaintiffs originally named several defendants in this law suit, including Bureau Veritas,  
7 S.A., Wartsila North America, Inc., Wartsila NSD Australia, Wartsila New Zealand, Ltd., and  
8 Wartsila Finland Oy. Plaintiffs subsequently voluntarily dismissed Wartsila Australia and  
9 Wartsila New Zealand. The Court then granted leave for plaintiffs to amend its complaint to  
10 include four additional defendants, Bureau Veritas North America, Inc., Bureau Veritas  
11 (Canada), Inc., Wartsila Diesel Normed, S.A., and Wartsila Corporation. Wartsila Diesel  
12 Normed manufactured the engines that were installed on the Wind Song. In addition to the  
13 claims alleged against the Bureau Veritas entities, plaintiffs allege that the Wartsila entities  
14 negligently provided service on the engines or provided faulty parts for the engines which  
15 contributed to the fire.

16 The Court subsequently dismissed defendants Bureau Veritas, S.A., and Wartsila Finland  
17 Oy, from this litigation. (Dkts. #99 and #101). The Court found that it lacked jurisdiction over  
18 Bureau Veritas, S.A., because a valid and enforceable forum selection clause between it and  
19 plaintiffs requires that all litigation take place in the court of Nanterre, France. The Court also  
20 found that it lacked jurisdiction over Wartsila Finland Oy because there were insufficient  
21 contacts between it and this forum.

22 Plaintiffs then filed a motion for reconsideration, or in the alternative, motion for  
23 certification of those Orders for appeal in the Ninth Circuit Court of Appeals. (Dkt. #103). The  
24 Court denied that motion. (Dkt. #106). Plaintiffs then filed appeals from the Orders in the  
25 Ninth Circuit Court of Appeals. (Dkts. #107 and #109). Shortly after filing the appeals,  
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1 plaintiffs filed a set of motions asking this Court to certify its previous Orders of dismissal and  
2 Order denying reconsideration for appeal in the Ninth Circuit Court of Appeals, which this  
3 Court also denied. (Dkts. #119, #123, #131 and #134).

4 In the meantime, plaintiffs had filed a first amended complaint, which continued to name  
5 both Bureau Veritas, S.A., and Wartsila Finland Oy, as defendants. Following a series of  
6 telephonic discussions with the parties, and subsequent written briefing, the Court directed  
7 plaintiffs to file a second amended complaint that no longer named either of those defendants.  
8 (Dkt. #137). Plaintiffs filed the second amended complaint as directed. (Dkt. #139). Curiously,  
9 plaintiffs did not amend the complaint to allege any claims against Wartsila Diesel Normed, S.A.,  
10 despite the fact that this Court granted plaintiffs' motion to add such defendant. Rather,  
11 plaintiffs chose to add allegations against Wartsila Corporation, and two new Bureau Veritas  
12 entities.

13 The instant motion followed. Several of the Bureau Veritas defendants have also moved  
14 to dismiss the second amended complaint for lack of jurisdiction. (Dkt. #144). That motion will  
15 be addressed in a separate Order.

#### 16 **B. General Jurisdiction**

17 The Court may exercise general personal jurisdiction over a defendant when it has  
18 engaged in substantial or continuous and systematic business activities in the forum state.  
19 Plaintiffs apparently allege in their complaint that general jurisdiction over Wartsila Corporation  
20 is proper because it, or one of its agents, has consented to jurisdiction in this Court. (Dkt. #139  
21 at 5). However, the Court finds no facts in the complaint to support such a conclusory  
22 allegation.

23 Plaintiffs have failed to produce any Purchase Order or contract with Wartsila  
24 Corporation containing any agreement to forum selection in Washington State. It is not enough  
25 that plaintiffs allege to have sent the terms via e-mail to an unspecified e-mail address or general  
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1 web address. Furthermore, plaintiffs have failed to produce any evidence that Wartsila North  
2 America is an agent of Wartsila Corporation, or that it had any authority, either explicit or  
3 implied, to enter into any agreements on behalf of Wartsila Corporation. Indeed, Wartsila  
4 Corporation has offered testimony to the contrary, through its Executive Vice President and  
5 CFO, Raimo Lind, that Wartsila North America never had such authority. (Dkt. #150 at 2).

6 In addition, Wartsila Corporation has submitted evidence demonstrating that it is a  
7 separate and independent company from Wartsila North America. Wartsila Corporation is a  
8 company organized under the laws of Finland, and its principal place of business is in Helsinki,  
9 Finland. It is the indirect parent company of Wartsila North America by virtue of the fact that it  
10 holds stock in a company, which owns the stock of another company, which owns the stock of  
11 Wartsila North America. (Dkt. #150 at 1). However, a shareholder relationship is not a  
12 predicate for asserting personal jurisdiction over a parent corporation.

13 Wartsila Corporation does not now, nor has it ever, had an office in the State of  
14 Washington. It has never maintained a phone listing or bank account in the state, nor has it ever  
15 maintained a mailing address in the state. Wartsila Corporation maintains its own working  
16 capital, bank accounts and personnel in Finland. It also has its own management personnel, and  
17 maintains its own books and records, and is independently audited. Furthermore, Wartsila  
18 Corporation has its own seven-member Board of Directors. None of the Directors of Wartsila  
19 Corporation are directors of Wartsila North America. Thus, there is no evidence that Wartsila  
20 Corporation is the alter ego of Wartsila NA or any other Wartsila entity.

21 In addition, there is no evidence the Wartsila Corporation conducts business on a  
22 systematic and continuous basis in the United States. Although Wartsila Corporation does  
23 maintain a website providing general information about the company and its subsidiaries, it  
24 refers any potential purchaser to one of its subsidiaries' websites to make any actual purchases.  
25 (Dkt. #150 at 2). In addition, Wartsila Corporation provides its manufactured parts and engines  
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1 to Wartsila NA, who in turn distributes them to various locations inside and outside of the  
2 United States.

3 Moreover, plaintiffs have provided no evidence of any specific Wartsila Corporation  
4 parts that have made their way into the forum state. Indeed, in its previous Order dismissing  
5 plaintiffs' complaint against Wartsila Finland Oy, this Court specifically noted that there has  
6 been no evidence that any spare low pressure fuel line was ever even ordered for the M/S/Y  
7 Wind Song prior to the fire, and plaintiffs have failed to produce any such evidence in response  
8 to the instant motion. Neither have plaintiffs provided any evidence that any activity related to  
9 the instant claims took place in Washington State between themselves and Wartsila Corporation.  
10 Accordingly, the Court agrees with defendants that this Court may not exercise general personal  
11 jurisdiction over Wartsila Corporation.

### 12 **C. Specific Jurisdiction**

13 Specific personal jurisdiction may be exercised over a foreign defendant when (1) the  
14 foreign defendant acted or consummated a transaction in the forum by which he purposefully  
15 availed himself of the privilege of conducting business in the forum; (2) the claim arises from  
16 defendant's forum-related activities; and (3) the exercise of personal jurisdiction is reasonable.  
17 *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir. 1995). If any one of  
18 these three requirements is not satisfied, the Court may not exercise jurisdiction over the  
19 defendant. *Id.* For the reasons set forth below, the Court finds that these requirements have not  
20 been satisfied.

21 Plaintiffs make no specific complaints against Wartsila Corporation. Rather, plaintiffs  
22 apparently allege that Wartsila North America either designed, manufactured, sold, serviced  
23 and/or repaired the engines on the M/S/Y Wind Song, and acted as an agent of Wartsila  
24 Corporation. (*See* Dkt. #139 at 7-8 and 14). Through the limited discovery conducted thus far,  
25 the parties have discovered that the entity Wartsila Diesel Normed S.A. sold the engines to the  
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1 shipyard that built the Wind Song, and Wartsila Corporation did not manufacture those engines.  
2 (Dkt. #55, Exs. A and B). Moreover, the service and repair of the yacht took place in New  
3 Zealand. (Dkt. #54). Plaintiffs have provided no evidence that any service or repair parts were  
4 provided to the M/S/Y Wind Song from Wartsila Corporation, or that the service or repair  
5 occurred in the United States.

6 Despite this apparent lack of connection between Wartsila Corporation and this forum,  
7 plaintiffs argue that because Wartsila North America has contact with the forum, and sometimes  
8 acts as an agent or distributor for Wartsila Corporation, Wartsila Corporation is subject to  
9 personal jurisdiction in this Court because it has inserted its products into the stream of  
10 commerce in the forum. In the alternative, plaintiffs argue that there is at least enough minimum  
11 contact with the United States as a whole that this Court may exercise personal jurisdiction  
12 under Rule 4(k)(2) of the Federal Rules of Civil Procedure. The Court finds these arguments  
13 misplaced.

14 As a threshold matter, as noted above, there is no evidence that Wartsila North America  
15 acts as the “alter ego” of Wartsila Corporation. To the contrary, defendants have submitted  
16 evidence that Wartsila NA is a separate and independent entity. Wartsila North America is a  
17 Maryland Corporation, with its corporate headquarters in Houston, Texas. It also has facilities  
18 in Florida, Maryland, Virginia, Louisiana, California and Washington. (Dkt. #54). Wartsila  
19 North America maintains its own working capital, bank accounts and personnel. It has its own  
20 separate financial statements, and is independently audited. Furthermore, Wartsila North  
21 America has its own Board of Directors that meets two to three times a year. Minutes are kept  
22 of those meetings. None of the directors serves as a director of Wartsila Corporation. Finally,  
23 while Wartsila Corporation may manufacture engines and engine parts, Wartsila North America  
24 provides service and repair of engines made by many different companies. (Dkt. #54). Wartsila  
25 North America occasionally subcontracts repair or service work to its affiliates. In those  
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1 instances, Wartsila North America is the affiliate's customer, and it is responsible for payment of  
2 the invoice, even if Wartsila North America is ultimately not paid by its customer. Thus, the  
3 Court is convinced that Wartsila North America is not the alter ego of Wartsila Corporation.

4 The Court next turns to plaintiffs' argument that Wartsila Corporation has inserted its  
5 products into the stream of commerce through Wartsila North America, and therefore, this  
6 Court can assert personal jurisdiction over Wartsila Corporation. It has long been held that  
7 courts may assert personal jurisdiction over a foreign defendant based on the theory that a  
8 corporation that has put its product into the stream of commerce with the expectation that it will  
9 be purchased in a specific forum may be haled into court when a personal injury has been caused  
10 by that product. *Asahi Metal Indus. Co., Ltd. v. Superior Court of California*, 480 U.S. 102,  
11 107 (1987). However, the United States Supreme Court has made clear that "[t]he 'substantial  
12 connection,' between the defendant and the forum State necessary for a finding of minimum  
13 contacts must come about by an action of the defendant purposefully directed toward the forum  
14 State. The placement of a product into the stream of commerce, without more, is not an act of  
15 the defendant purposefully directed toward the forum State." *Asahi*, 480 U.S. at 112. In  
16 addition, the Ninth Circuit Courts of Appeals has held that when the injury did not take place in  
17 the forum state, the fact that a corporation knew or should have known that a product would  
18 enter the foreign stream of commerce does not provide a basis for personal jurisdiction.  
19 *Omeluk*, 52 F.3d at 271.

20 In the instant case, plaintiff Holland America contacted Wartsila North America and  
21 asked for service on the M/S/Y Windsong in the South Pacific. (Dkt. #54). Wartsila North  
22 America subcontracted that service and repair work to Wartsila New Zealand. Plaintiff has  
23 produced no evidence that any Wartsila Corporation product was used in making the repairs.  
24 Even assuming that a Wartsila product or part had been used, there is no evidence that the  
25 product was shipped to or from the United States, and certainly not the forum state. In fact,  
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1 plaintiffs have argued only a hypothetical possibility that a low pressure fuel line on board the  
2 Wind Song at the time of the fire may have been a Wartsila Corporation part. That theory is  
3 based in part on their having replaced similar fuel lines with Wartsila Corporation parts in the  
4 Wind Song's sister ships. However, no evidence that any such parts were ordered for the Wind  
5 Song has been produced. Accordingly, the Court finds that there is no substantial connection  
6 between Wartsila Corporation and this forum necessary to establish minimum contacts for  
7 personal jurisdiction.

8 For similar reasons, the Court also rejects plaintiffs' argument that Federal Civil  
9 Procedure Rule 4(k)(2) establishes jurisdiction over Warstila Corporation. Rule 4(k)(2) applies  
10 only where a plaintiff's claims arise under federal law and where the defendant has "significant  
11 nationwide contacts," but is "not subject to jurisdiction in any state." *American Tel & Tel. Co.*  
12 *v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 590 (9th Cir. 1996). In the instant case,  
13 plaintiffs have not demonstrated that defendant has significant nationwide contacts, nor have  
14 they established that Wartsila Corporation is not subject to the general jurisdiction of any state.  
15 Thus, the Court finds that Rule 4(k)(2) is not applicable to this case.

16 Similarly, the fact that Wartsila Corporation advertises to consumers in the United States  
17 through a website does not give rise to jurisdiction under 4(k)(1)(a) in this Court. It is well  
18 established that general internet advertising does not subject the advertiser to jurisdiction.  
19 *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9<sup>th</sup> Cir. 1997) (explaining that "[c]reating a  
20 site, like placing a product into the stream of commerce, may be felt nationwide – or even  
21 worldwide – but, without more, it is not an act purposefully directed toward the forum state.").

22 Finally, the Court addresses plaintiffs' argument that economic injury occurred in the  
23 forum state, and therefore, the theory of personal jurisdiction in *Asahi, supra*, is applicable to  
24 this case. Plaintiffs argue that the economic injury suffered after the complete destruction of the  
25 Wind Song occurred in Washington, because the business operations of that entity are based in  
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1 Washington not the Bahamas. While that may be true, none of the cases cited by plaintiffs  
2 support the theory that stream of commerce jurisdiction can be predicated upon a purely  
3 economical injury when the product and the physical injury were outside of the forum state.  
4 Therefore, the Court finds plaintiffs' argument inapposite to the instant situation.

5 Accordingly, because plaintiffs cannot satisfy a specific jurisdiction test, the Court finds  
6 that it cannot exercise specific personal jurisdiction over Wartsila Corporation, and it should be  
7 dismissed from this litigation.

8 **III. CONCLUSION**

9 Defendants' Motion to Dismiss the Second Amended Complaint for Lack of Jurisdiction  
10 (Dkt. #148) is GRANTED. Plaintiff's claims against defendant Wartsila Corporation are  
11 DISMISSED, and Wartsila Corporation is DISMISSED as a party to this action.

12 The Clerk shall forward a copy of this Order to all counsel of record.

13 DATED this 17 day of May, 2005.

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15 RICARDO S. MARTINEZ  
16 UNITED STATES DISTRICT JUDGE  
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